

## § 70.21

(b) *Authority to grant or deny requests.* The disclosure officer, or his or her designee, is authorized to grant or deny any request for a record in his or her custody.

(c) *Determination that request has been received by the proper component.* (1) When a component receives a request for a record, the component shall promptly determine whether another component or another agency of the Government is better able to determine whether the record is exempt to any extent from mandatory disclosure under the FOIA.

(2) If the receiving component determines that it is the component and agency better able to determine whether or not to disclose the record requested, that component shall respond to the request.

(3) If the receiving component believes that another component or agency is better able to determine whether the requested record is exempt from mandatory disclosure under the FOIA, the receiving component shall refer the request to the component or agency that it believes should handle the request.

(4) If the receiving component determines that it is the component and agency better able to determine whether part of the requested records is exempt from disclosure, and another component or agency has primary responsibility with respect to other parts of the requested record, the receiving component shall either:

(i) Respond to the request after consulting with the appropriate component or agency concerning the records for which that component or agency has primary responsibility, or

(ii) Respond to the part of the request for which it has primary responsibility and refer the other portion or portions of the request to the appropriate component or agency.

(d) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or to another agency, it shall notify the requester of the referral and inform the requester of the name and address of each component or agency to which the request has been referred and the portions of the request so referred.

## 29 CFR Subtitle A (7-1-04 Edition)

(e) *Processing of requests that are not properly addressed.* (1) A request that is not properly addressed as specified in § 70.7(a) of this subpart shall be forwarded to the appropriate component, if known, or to the Office of the Assistant Secretary for Administration and Management (OASAM), which shall make reasonable efforts to determine the appropriate component and, if able to do so, shall forward the request to the appropriate component or components for processing. A request not addressed to the appropriate component will be deemed not to have been received by the Department of Labor until OASAM has forwarded the request to the appropriate component and that component has received the request, or until the request would have been so forwarded and received with the exercise of reasonable diligence by Department personnel.

(2) A component receiving an improperly addressed request forwarded by OASAM shall notify the requester of the date on which it received the request.

(f) *Date for determining responsive records.* In determining records responsive to a request, a component will include only those records existing as of the date of its receipt of the request as that date is determined in accordance with paragraph (c).

### § 70.21 Form and content of component responses.

(a) *Form of notice granting a request.* After a component has made a determination to grant a request in whole or in part, the component shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the component. The component shall inform the requester in the notice of any fees to be charged in accordance with the provisions of subpart C.

(b) *Form of notice denying a request.* A disclosure officer denying a request in

## Office of the Secretary of Labor

## § 70.26

whole or in part shall so notify the requester in writing. The notice must be signed by the disclosure officer or his designee, and shall include:

(1) The name and title or position of the disclosure officer and if applicable, of the designee.

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the component has relied upon in denying the request.

(3) A statement that the denial may be appealed under § 70.22 and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

### § 70.22 Appeals from denial of requests.

When a request for access to records or for a waiver of fees has been denied in whole or in part, where a requester disputes matters relating to the assessment of fees, or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the Solicitor of Labor. The appeal must be filed within 90 days of:

(a) The denial, actual or constructive, of the request, including a denial of a request for a fee waiver,

(b) An agency's response on a dispute of matters relating to the assessment of fees, or

(c) In the case of a partial denial, 90 days from the date the material was received by the requester.

The appeal shall state, in writing, the grounds for appeal, including any supporting statements or arguments. To facilitate processing, the appeal should include copies of the initial request and the response of the disclosure officer. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Both the envelope and the letter of appeal itself must

be clearly marked: "Freedom of Information Act Appeal."

[54 FR 23144, May 30, 1989; 54 FR 25204, June 13, 1989]

### § 70.23 Action on appeals.

The Solicitor of Labor, or his designee, shall review the appellant's supporting papers and make a determination de novo whether the denial specified in § 70.22 was proper and in accord with the applicable law.

### § 70.24 Form and content of action on appeals.

The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record should be provided promptly in accordance with the decision on appeal.

### § 70.25 Time limits and order in which requests and appeals shall be processed.

Components of the Department of Labor shall comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component shall notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA.

### § 70.26 Predisclosure notification to submitters of confidential commercial information.

(a) *In general.* FOIA requests for confidential commercial information provided to the Department by business submitters shall be processed in accordance with this section.